

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6404 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

IQBAL MOHAMED SAFI

Versus

STATE OF GUJARAT

Appearance:

Shri N.K.Pahwa, Advocate, for Shri P.M.Thakkar,
Advocate, for the Petitioners.

Shri A.G. Uraizee, Assistant Government Pleader, for
the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 23/08/96

ORAL JUDGEMENT

The petitioners by means of this petition under

Article 226 of the Constitution of India have sought relief against their forcible eviction by and on behalf of the respondents from the premises stated to have been taken on lease by them from one Sardar Risala Masjid.

2. It is not necessary to set out in detail the facts giving rise to this petition. Both the petitioners claim to have taken their respective premises on lease from Sardar Risala Masjid and they claim to be carrying on their respective business therein. Copies of rent receipts issued by the landlord are collectively at Annexures-A & B to this petition. Petitioner No.1 claims to be running his flour mill in the rented premises in the name and style of Bilar Flour Mills. It has duly been registered under the Bombay Shops and Establishment Act, 1948. A copy of the certificate of registration issued by and on behalf of the Municipal Corporation of Rajkot is at Annexure-C to this petition. Petitioner No.2 carries on his business of manufacture of suitcases in the rented premises in the name and style of Bharat Suitcase Manufacturers. He has also obtained registration of his business under the aforesaid statute. A copy of the certificate issued by the Municipal Corporation of Rajkot in that case is at Annexure-D to this petition. Petitioner No.2 has got his manufacturing activity registered as a small scale industry. A copy of the certificate of its registration as a small scale industry is at Annexure-E to this petition. It is the case of the petitioners that they are sought to be evicted by and on behalf of the respondents on the ground that the land on which their business houses are situated belongs to the Public Works Department of the State Government. They have therefore approached this court by means of this petition under Article 226 of the Constitution of India for relief against their forcible eviction.

3. It is not in dispute that the petitioners are in possession of their respective premises taken on lease from Sardar Risala Masjid. Learned Assistant Government Pleader Shri Uraizee for the respondents has stated that the entire construction was unauthorised and the petitioners have no right to remain in possession of the premises, the construction of which is unauthorised. Even if that be so, they cannot be evicted by forcible dispossession de hors the law.

4. The law in that regard is now well-settled. A reference deserves to be made to the binding ruling of the Supreme Court in the case of KRISHNA RAM MAHALE v. SHOBHA VENKAT RAO reported in AIR 1989 Supreme Court at

page 2097. It has been held therein:

"It is a well-settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law."

5. To the same effect is the ruling of this court in the case of RAMSHREE MAHAVIR v. GIRDHARILAL reported in (1970) 11 Gujarat Law Reporter at page 971. It has been held therein:

"In a civilization where the rule of law obtains, it is difficult to envisage a court of law upholding any such right in favour of a person who claims right to dispossess by use of force without recourse to due process of law. If this were to be permitted, there would be a violent conflict between persons claiming individual rights. There is no manner of doubt that no such right can be claimed by the defendant regardless of the question whether or not the plaintiff himself has any right to remain in possession. Once it is established by the plaintiff that he is in exclusive possession and it is admitted by the defendant that he is in such possession, an injunction restraining the defendant from dispossessing the plaintiff by force must issue as a matter of course, more readily, if the defendant persists in asserting the claim that he has a right to take the law in his own hands and forcibly dispossesses, the plaintiff. "

6. The aforesaid ruling of the Supreme Court is binding to this court by virtue of Article 141 of the Constitution of India. Sitting as a single Judge, the aforesaid ruling of this court is also binding to me. Even otherwise, I am in respectful agreement therewith. The aforesaid rulings of the Supreme Court and this court provide a complete answer to the aforesaid submission urged before me by learned Assistant Government Pleader Shri Uraizee for the respondents.

7. In the instant case, the petitioners are sought to be evicted by taking forcible possession therefrom. That cannot simply be permitted to be done in view of the aforesaid binding rulings of the Supreme Court and of this court.

8. It is not the case of the respondents that the petitioners were sought to be evicted in accordance with the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972. If the respondents find that the petitioners are in unauthorised occupation of any public premises, action can be taken for their eviction in accordance with the aforesaid statute. They cannot simply be forcibly evicted from their premises even if they are found to be in unauthorised occupation without following the procedure established by law.

9. In the result, this petition is accepted. A Writ of Mandamus is ordered to be issued to the respondents not to evict forcibly or not to take forcible possession of the premises in occupation and possession of the petitioners. This judgment of mine shall not preclude the respondents from evicting the petitioners from the premises in their occupation and possession if they are found to be in unauthorised occupation thereof after following the procedure established by law. Rule is accordingly made absolute with no order as to costs.

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